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Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, Oct. 2, 2017]

§ 1002.14 Rules on providing appraisals and other valuations.

(a) *Providing appraisals and other valuations*—(1) *In general.* A creditor shall provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. A creditor shall provide a copy of each such appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier. An applicant may waive the timing requirement in this paragraph (a)(1) and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. Any such waiver must be obtained at least three business days prior to consummation or account opening, unless the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

(2) *Disclosure.* For applications subject to paragraph (a)(1) of this section, a creditor shall mail or deliver to an applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling, a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application. In the case of an application for credit that is not to be secured by a first lien on a dwelling at

the time of application, if the creditor later determines the credit will be secured by a first lien on a dwelling, the creditor shall mail or deliver the same notice in writing not later than the third business day after the creditor determines that the loan is to be secured by a first lien on a dwelling.

(3) *Reimbursement.* A creditor shall not charge an applicant for providing a copy of appraisals and other written valuations as required under this section, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or other written valuation unless otherwise provided by law.

(4) *Withdrawn, denied, or incomplete applications.* The requirements set forth in paragraph (a)(1) of this section apply whether credit is extended or denied or if the application is incomplete or withdrawn.

(5) *Copies in electronic form.* The copies required by § 1002.14(a)(1) may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) *Consummation.* The term “consummation” means the time that a consumer becomes contractually obligated on a closed-end credit transaction.

(2) *Dwelling.* The term “dwelling” means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(3) *Valuation.* The term “valuation” means any estimate of the value of a dwelling developed in connection with an application for credit.

[78 FR 7248, Jan. 31, 2013]

§ 1002.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of a self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section.

Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this part; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if the information has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably

likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d) *Scope of privilege*—(1) *General rule.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this part; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of §1002.4(b)) in any proceeding or civil action in which a violation of the Act or this part is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about

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the self-test that is required to be retained under § 1002.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 1002.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this part has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

§ 1002.16 Enforcement, penalties and liabilities.

(a) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, National Credit Union Administration, Surface Transportation Board, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, Secretary of Transportation, and Bureau of Consumer Financial Protection.

(2) Except to the extent that administrative enforcement is specifically assigned to some government agency other than the Bureau, and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission is authorized to enforce the requirements imposed under the Act and this part.

(b) *Penalties and liabilities.* (1) Sections 702(g) and 706(a) and (b) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this part is subject to civil liability for actual and punitive damages in individual or class actions. Pur-

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suant to sections 702(g) and 704(b), (c), and (d) of the Act, violations of the Act or this part also constitute violations of other Federal laws. Liability for punitive damages can apply only to non-governmental entities and is limited to \$10,000 in individual actions and the lesser of \$500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f) of the Act, a civil action under the Act or this part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within five years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within five years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this part, it may refer the matter to the Attorney General of the United States. If the Bureau, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe that one or more creditors have engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this part, the agency shall refer the matter to the Attorney General. If the agency has reason to believe that one or more creditors violated section 701(a) of the Act, the agency may refer a matter to the Attorney General.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors have engaged in a pattern or practice in violation of the Act or this part, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.